

### **REMARKS**

This is in response to the Notice of Non-Compliant Amendment (37 CFR 1.121) mailed December 8, 2008, which was responsive to the amendment filed August 29, 2008. The August 29, 2008 amendment was in response to a Notice of Non-Compliant Amendment (37 C.F.R. 1.121) mailed July 30, 2008. The last response to an Office Action on the merits was filed on May 5, 2008.

Applicants request that the substitute specification and amendments filed herewith be entered by the Examiner. In view of the revisions made herein, Applicants submit that the response of May 5, 2008 is now fully compliant with 37 C.F.R. 1.121, and reconsideration of the May 5, 2008 amendment is respectfully requested.

### **Notice of Non-Compliant Amendment**

The Examiner states that the amendment filed August 29, 2008 is non-compliant for the following reasons:

- 1) The amendments to the specification are improper; and
- 2) The proposed claim amendments were not made to the claim text as filed May 8, 2008.

Applicants thank the Examiner for indicating that the amendments to the abstract are proper. (The Examiner indicated that the proper amendments to the abstract were filed July 29, 2008; however, Applicants assume that the Examiner meant August 29, 2008, since no amendment was filed on July 29, 2008.)

### **Specification**

The Examiner has indicated that the amendments to the specification in the August 29, 2008 response were made to portions of the non-entered specification of May 5, 2008. Applicants

respectfully point out that it was not clearly indicated in the July 30, 2008 Notice of Non-Compliant Amendment that the specification filed May 5, 2008 was not entered. Specifically, the Examiner only marked box number 2 on continuation sheet PTOL-324, indicating only that the amendments to the abstract were not proper. Moreover, in the Response to Amendment on page 2, the Examiner noted that the substitute specification filed May 5, 2008 appeared to introduce new matter while not overcoming all objections. Thus, for these reasons, Applicants determined that the substitute specification filed May 5, 2008 had been entered.

However, the Examiner indicates in the December 8, 2008 Notice of Non-Compliant Amendment that the May 5, 2008 substitute specification was not entered, and that an entire new marked up specification including both proper amendments of May 5, 2008 and August 29, 2008 may be filed. Thus, Applicants submit a new substitute specification herewith in marked-up and clean copies.

The substitute specification is based on the last entered specification, marked up to show the amendments of May 5, 2008 and August 29, 2008, and amendments to correct minor technical errors. Applicants' understanding is that the last entered specification is the originally filed specification of November 10, 2003, as amended by preliminary amendment on November 10, 2003.

Applicants note that since the Examiner indicates in the December 8, 2008 Notice of Non-Compliant Amendment that the amendments to the Abstract filed August 29, 2008 were proper (and therefore presumably entered), the Abstract is not presented in the presently presented substitute specification.

In the July 30, 2008 Notice of Non-Compliant Amendment, the Examiner indicated in the Response to Amendment on page 2 that the substitute specification filed May 5, 2008 appeared to introduce new matter while not overcoming all objections. Applicants addressed these comments in the August 29, 2008 response; however, since the Examiner did not enter the amendments to the

specification set forth in the August 29, 2008 Response, Applicants' response to the Examiner's comments are resubmitted, in revised form below.

With respect to new matter being added to the specification, the Examiner gave only one example of such allegedly added matter, *i.e.*, the paragraph on p. 7, from lines 10-12 of the marked-up copy of the non-entered May 5, 2008 substitute specification. Thus Applicants can address only this one specific example of added matter. The paragraph in the non-entered substitute specification of May 5, 2008 to which the Examiner referred reads:

(3) The interlabial pad according to any one of (1) to (2) further including a finger insertion restriction portion that is formed by binding each opposite side face to the **other opposite side face**.

(Emphasis added.)

The Examiner asked where in the original specification it is disclosed that there are "two opposite side faces." Applicants did not intend to suggest that there are two opposite side faces, but rather, the amendment was intended to clarify that the finger insertion restriction portion is formed by the binding of two opposing faces of a single opposite side face to each other. In order to clarify this intended meaning, Applicants amend the presently presented substitute specification, at p. 7, ll. 3-5, as follows:

(3) The interlabial pad according to any one of (1) to (2), further including a finger insertion restriction portion that is formed by **binding two facing portions of the opposite side face to each other**.

(Emphasis added.)

Support for this amendment may be found, *e.g.*, at p. 19, ll. 20-23, and on p. 22, ll. 6-9 of the original specification as filed. Applicants respectfully submit that no new matter is added and that this amendment further obviates the Examiner's objection.

In the July 30, 2008 Notice of Non-Compliant Amendment, the Examiner asked where the specification now discloses the subject matter deleted from p. 10-11 of the non-entered substitute specification filed May 5, 2008. The deleted matter from p. 10-11 disclosed a “nail tip escapement” which allows the fingernail to protrude from the finger insertion cavity, thereby allowing a ball of a finger in the top joint to contact the side of the interlabial pad opposite the body more tightly. Applicants refer the Examiner to the text of the presently filed substitute specification, beginning on p. 29, ll. 2-18, which discloses the same subject matter as the deleted text, and, in the Applicants' opinion, fully describes and enables the claimed invention.

Applicants respectfully submit that all subject matter in deleted paragraphs of the substitute specification that is of relevance to the claimed invention has been carefully reviewed to ensure that such relevant subject matter is disclosed elsewhere in the substitute specification.

In the July 30, 2008 Notice of Non-Compliant Amendment, the Examiner maintained her objection in paragraph 8 (presumably of the Office Action of January 30, 2008) to the non-entered substitute specification of May 5, 2008. Paragraph 8 of the January 30, 2008 Office Action cited 35 U.S.C. § 112, first paragraph, which requires that the specification be written in “full, clear, concise, and exact terms,” and stated that the specification should be revised carefully in order to comply with this statute. The Examiner gave specific examples of instances where the amendments to the specification were not fully responsive to the Examiner's objection, specifically, p. 1, ll. 12-14; the paragraph bridging p. 3-4; p. 8, ll. 15-18; and p. 9, ll. 5-8 of the non-entered substitute specification filed May 5, 2008.

It is unclear whether the Examiner intended these specific paragraphs of the non-entered substitute specification filed May 5, 2008 to be only representative examples, however, Applicants cannot guess as to what other paragraph of the substitute specification the Examiner might object to, and can therefore only address the specific examples that were cited by the Examiner. Applicants believe they fully address the objections to the cited text of the marked-up copy of the non-entered substitute specification of May 5, 2008, below:

**P. 1, ll. 12-14:** The Examiner objects to the sentence which reads: "The present invention relates to an interlabial pad which can be easily worn to the interlabial space with precision and a wrapping body for wrapping the interlabial pad with a wrapping container."

Applicants respectfully disagree with the Examiner, and submit that this sentence clearly defines the Technical Field of the invention. Applicants respectfully request the Examiner to provide further details as to the grounds for objection to this sentence, should the Examiner maintain her objection.

**Paragraph spanning p. 3-4:** The Examiner objects to this paragraph under 35 U.S.C. § 112, first paragraph, as failing to be clear and concise. This paragraph is presently amended to further clarify the intended meaning (*see*, p. 3, ll. 13-23 of the presently filed marked-up substitute specification). Applicants believe the amendment obviates the Examiner's objection.

**P. 8, ll. 15-18:** The Examiner objects to this paragraph as failing to be clear and concise. As shown on p. 8, ll. 7-10 of the presently presented marked-up substitute specification, this paragraph is presently amended to further clarify the intended meaning. Applicants believe the amendment obviates the Examiner's objection.

**P. 9, ll. 5-8:** The Examiner objects to this sentence as failing to be clear and concise. As shown on p. 8, ll. 19-22 of the presently filed marked-up substitute specification, the sentence is amended to further clarify the intended meaning of the paragraph. Applicants believe the amendment obviates the Examiner's objection.

### **Claim Objections**

In the December 8, 2008 Notice of Non-Compliant Amendment, the Examiner indicates that the claim amendments filed August 29, 2008 are not proper. The Examiner states that the claims as amended May 5, 2008 were entered, and that new amendments should be made to these claims. Thus, Applicants presently present a listing of the pending claims as of May 5, 2008,

marked up to show two new amendments to claim 1, which are made in order to address the Examiner's objections raised in the July 30, 2008 Notice of Non-Compliant Amendment.

In the July 30, 2008 Notice of Non-Compliant Amendment, the Examiner noted in the Response to Arguments on page 2 that claim 1 was objected to. Applicants presently amend claim 1 to address the Examiner's objection and request that the arguments made in the May 5, 2008 response be fully considered together with the arguments presented here for the additional amendment to claim 1. Applicants believe that since two Notice of Non-Compliant Amendments have been issued but no Action on the Merits, the May 5, 2008 response should be fully considered by the Examiner once it is found to be fully compliant.

The Examiner objects to claim 1 as no longer reading on the elected mini sheet species exemplified in Figure 14B. The Examiner provides the example that lines 12-15 of amended claim 1 in the May 5, 2008 response do not read on the elected mini sheet species because the claimed mini sheet has "a length of 50% to 80% of a length of the longitudinal centerline along the opposite side face *that extends from the second edge of the interlabial pad*" (emphasis added), which is not consistent with the structural features of the elected mini sheet species.

Applicants thank the Examiner for pointing out that the elected mini sheet species illustrated in Figure 14B does not extend from the second edge of the interlabial pad, but rather, extends *from a position displaced from the second edge*. Applicants have amended claim 1 to reflect the proper position from which the elected mini sheet species extends. Support for this amendment may be found, e.g., on p. 28, ll. 24-26 of the original specification as filed.

The Examiner also pointed out that amended claim 1 recites that the second edge is "along a longitudinal centerline" and would thus require that the mini sheet piece extend from the side along the longitudinal centerline rather than from a position displaced from the second opposing edge. Applicants thank the Examiner for pointing out this inadvertent error in the wording of the amended claim. Applicants submit that the amendment to claim 1 presented in this response, which now recites: "first and second edges at opposing ends of a longitudinal centerline extending

in a longitudinal direction of the interlabial pad” further clarifies that the first and second edges are at opposing ends of the interlabial pad and not along the longitudinal centerline.

Applicants submit that it is now clear from presently amended claim 1 that the mini sheet piece extends from a position displaced from a second edge, which is now properly claimed as being at an opposing end of the longitudinal centerline rather than along the longitudinal centerline, and that claim 1 reads on the elected mini sheet species illustrated in Figure 14B. Accordingly, Applicants submit that the above amendments to claim 1 obviate the Examiner’s objection to claim 1.


**CONCLUSION**

It is respectfully submitted that each of the presently pending claims are in condition for allowance and notification to that effect is requested.

Further, Applicants believe that they have fully responded to the Examiner's specific objections to the specification and claims. The Examiner is invited to contact Applicants' representative at the below-listed telephone number if it is believed that the prosecution of this application may be assisted thereby.

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Respectfully submitted,

By 

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Attachments: Appendix with clean and marked-up copies of the substitute specification



**APPENDIX FOLLOWS:**

**CLEAN AND MARKED-UP SUBSTITUTE SPECIFICATIONS**